



U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-98-170-50827 Office: Vermont Service Center

Date: JUN 15 2000

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

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FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly
Terrance M. O'Reilly, Director
Administrative Appeals Office

JUN 15 2000 - CIT 208

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an individual who seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a religious priest and kirtan performer. The director denied the petition determining that the petitioner had failed to establish his two years of continuous religious work experience.

On appeal, counsel argues that the petitioner is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

At issue in the director's decision is whether the petitioner has established his two years of continuous work experience in the proffered position.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition.

The petition was filed on May 21, 1998. Therefore, the petitioner must establish that he had been continuously working in the prospective occupation for at least the two years from May 21, 1996 to May 21, 1998.

In its letter dated April 3, 1998, the petitioner's prospective employer stated that: .

[The petitioner] has performed volunteer religious services at the Gurdwara Bridgewater during the period of May 1995 through September 1995; and for the period of January 1996 through August 1996.

This also certifies that [the petitioner] was employed as an R1 religious priest at the Bridgewater Gurdwara during the period of March 1997 through July 1997, and September 1997 to the present.

A representative of the Gurdwara Dera Mohan Pur in India stated that the petitioner worked in an unspecified capacity from September 1996 to March 1997 and from July 1997 to September 1997.

On August 19, 1998, the director requested that the petitioner submit evidence of his work experience during the two-year period prior to filing. In response, the petitioner's prospective employer reviewed his work history.

The director determined that the petitioner's voluntary duties did not constitute qualifying work experience and denied the petition. On appeal, the petitioner's prospective employer states that:

The term "volunteer" was not intended to describe [the petitioner's] full-time work status, or his remuneration. The term "volunteer" was used to describe the absence of a formal, written employment agreement . . . [The petitioner] was given food, lodging and a cash stipend to support himself.

The petitioner has not submitted any independent, corroborative evidence to support the contention that he received a cash stipend during the two-year period prior to filing. Simply going on record without supporting documentary evidence is not sufficient for

purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). Moreover, the petitioner's prospective employer's revised definition of "volunteer" is not persuasive. When the petition was filed, and in response to the director's request for additional information, there had been no discussion of the petitioner's purported receipt of a cash stipend. Only after the director's decision of denial was the petitioner's remuneration brought forward. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. Matter of Izumii, Int. Dec. 3360 (Assoc. Comm., Ex., July 13, 1998). Further, there is no indication what the petitioner did while in India for ten months during the qualifying period.

The petitioner has not established that he was continuously engaged in a religious occupation from May 21, 1996 to May 21, 1998. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to establish that the prospective occupation is a religious occupation as defined at 8 C.F.R. 204.5(m)(2). Also, the petitioner has failed to establish that his prospective employer is a qualifying, non-profit religious organization as defined at 8 C.F.R. 204.5(m)(3), or that it made a valid job offer to him as required at 8 C.F.R. 204.5(m)(4). Furthermore, the petitioner has failed to establish that his prospective employer has the ability to pay the proffered wage as required at 8 C.F.R. 204.5(g)(2). As the appeal will be dismissed on the ground discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.